

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NIGEL LEE WHITTAKER, #375383

Plaintiff,

v.

UNKNOWN LEONARD, et al.,

Defendants.

Case No. 1:23-cv-284

Hon. Robert J. Jonker

ORDER APPROVING AND ADOPTING REPORT AND RECOMMENDATION

In this § 1983 prisoner civil rights action, Plaintiff Whittaker claims that Defendants Leonard, Schrader, Sipka, and Gregory—who are all employed as Corrections Officers for the Michigan Department of Corrections (“MDOC”)—violated the Eighth Amendment by using excessive force against him during an incident at MDOC’s Carson City Correctional Facility (“DRF”) on September 26, 2022. (ECF No. 1). Defendants move for summary judgment on the basis of exhaustion. (ECF No. 16). On May 24, 2024, the Magistrate Judge issued a Report and Recommendation recommending that the Court deny Defendants’ motion. (ECF No. 24). Judge Kent concluded that dueling affidavits from Whittaker and DRF’s Grievance Coordinator create a genuine issue of material fact over whether Whittaker resubmitted his Step II grievance appeal for processing as required by MDOC policy. (*Id.*). The Court has carefully reviewed the Magistrate Judge’s Report and Recommendation, which was duly served on the parties. No objections have been filed under 28 U.S.C. § 636(b)(1)(C).

IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate Judge, (ECF No. 24), is **APPROVED AND ADOPTED** as the opinion of the Court. Defendants' Motion for Summary Judgment on the Basis of Exhaustion, (ECF No. 16), is **DENIED**.

Dated: June 13, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE